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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

JAMES RAYMOND LAGUTARIS, RCP
30235 Corte Plata
Temecula, California 92691,

Respiratory Care Practitioner License No. 16811,
Respondent.

Case No. R-1996

**ACCUSATION AND
FIRST AMENDED
PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation and First Amended
Petition to Revoke Probation solely in her official capacity as the Executive Officer of the
Respiratory Care Board of California (Board).

2. On or about January 11, 1994, the Board issued Respiratory Care
Practitioner License No. 16811 to James Raymond Lagutaris (Respondent). This license was in
effect at all times relevant to the charges brought herein. It expired on October 31, 2005.

3. In a disciplinary action entitled *In the Matter of Accusation Against James
Raymond Lagutaris*, Case No. R-1861, the Board issued a decision effective May 10, 2004, in
which respondent's license was revoked. However, the revocation was stayed and respondent's
license was placed on probation for three (3) years with certain terms and conditions. A copy of

1 that decision is attached as Exhibit A and is incorporated herein by reference.

2 JURISDICTION

3 4. This First Amended Petition to Revoke Probation is brought before the
4 Board under the authority of the following laws. All section references are to the Business and
5 Professions Code unless otherwise indicated.

6 5. Section 3710 of the Code states: "The Respiratory Care Board of
7 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
8 the Respiratory Care Practice Act]."

9 6. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
10 revoke licenses to practice respiratory care as provided in this chapter."

11 7. Section 3750 of the Code states:
12 "The board may order the denial, suspension or revocation of, or the imposition of
13 probationary conditions upon, a license issued under this chapter, for any of the following causes:

14 "...

15 "(d) Conviction of a crime that substantially relates to the qualifications, functions, or
16 duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall
17 be conclusive evidence of the conviction..."

18 8. Section 3752 of the Code states:

19 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
20 made to a charge of any offense which substantially relates to the qualifications, functions, or
21 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this
22 article. The board shall order the license suspended or revoked, or may decline to issue a license,
23 when the time for appeal or when the time for appeal has elapsed, or the judgment of conviction
24 has been affirmed on appeal or when an order granting probation is made suspending the
25 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code
26 allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
27 aside the verdict of guilty, or dismissing the accusation, information, or indictment."

28 9. Section 490 of the Code states:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1023.4 of the Penal Code.”

10. Section 3754 of the Code states: “The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753.”

11. California Code of Regulations, Title 16, section 1399.370 states: “For the purpose of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“ . . .

“(c) Conviction of a crime involving driving under the influence or reckless driving under the influence...”

COST RECOVERY

12 Section 3753.5, subdivision (a) of the Code states:

“In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case.”

13. Section 3753.7 of the Code states:

“For purposes of the Respiratory Care Practice Act, costs of prosecution shall

1 include attorney general or other prosecuting attorney fees, expert witness fees, and other
2 administrative, filing, and service fees.”

3 14. Section 3753.1, subdivision (a) of the Code states:

4 “An administrative disciplinary decision imposing terms of probation may include,
5 among other things, a requirement that the licensee-probationer pay the monetary costs associated
6 with monitoring the probation.”

7 CAUSE FOR DISCIPLINE

8 (Conviction of Crimes)

9 15. Respondent is subject to disciplinary action under sections 3750,
10 subdivision (d), 3752 and 490 of the Code, and California Code of Regulations, Title 16, section
11 1399.370, subdivision (c), in that he was convicted of crimes substantially related to the
12 qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as
13 follows:

14 A. On or about February 23, 2006, in a criminal proceeding entitled *People v.*
15 *James Raymond Lagutaris*, in Superior Court of California, County of San Diego, North County
16 Division, Case Number CN197108, respondent was convicted by a plea of guilty to the crimes of
17 (1) driving under the influence of alcohol, a violation of Vehicle Code section 23152, subdivision
18 (a) and (2) driving with .08% or higher blood alcohol level, a violation of Vehicle Code section
19 23152, subdivision (b).

20 B. He was sentenced to serve 365 days in jail.

21 C. On or about June 27, 2005, a California Highway Patrol officer observed
22 respondent’s vehicle, with no hazard lights, stopped on the right shoulder of the freeway at about
23 3:55 a.m. Respondent was lying in the back seat of the vehicle. When he got up, he was
24 extremely dazed and confused. He told the officer he ran out of gas, pulled over and fell asleep.
25 The officer detected a strong odor of alcohol in respondent’s vehicle and on his breath, and
26 observed that his eyes were red and watery and his speech was slow. When asked if he had been
27 drinking alcohol, respondent said “a little”, but would give no further information. He failed the
28 field sobriety tests. The results of his breath test indicated his blood alcohol level was .18/ .17.

Respondent was arrested for driving under the influence of alcohol, a violation of Vehicle Code section 23152(a), and driving with .08% or higher blood alcohol level, a violation of Vehicle Code section 23152, subdivision (b).

D. On or about December 30, 2005, in a criminal proceeding entitled *People v. James Raymond Lagutaris*, in Superior Court of California, County of Orange, West Justice Center, Case Number 05WM11157, respondent was convicted by a plea of guilty to the crimes of (1) driving under the influence of alcohol with two priors, a violation of Vehicle Code section 23152, subdivision (a) and (2) driving with a suspended license with a prior offense within 5 years, a violation of Vehicle Code section 14601.2, subdivision (a).

E. He was sentenced to serve 180 days for Count 1 and 60 days for Count 2.

F. On November 14, 2005, a Huntington Beach police officer observed respondent's vehicle, with a blacked out license plate lamp, at about 8:10 p.m. When questioned by the officer, Respondent told the officer that his license was suspended for DUI and that he was drunk. The officer detected a strong odor of alcohol in respondent's breath. He failed the field sobriety tests. Respondent was arrested for violations including driving under the influence of alcohol, a violation of Vehicle Code section 23152(a).

FIRST CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

16. At all times after the effective date of Respondent's probation, Condition 2 stated:

"Respondent, at his expense, shall participate in random testing, including, but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

"At all times, Respondent shall fully cooperate with the

1 Board or any of its representatives, and shall, when directed,
2 submit to such tests and samples for the detection of alcohol,
3 narcotics, hypnotics, dangerous drugs or other controlled
4 substances.

5 "If Respondent is unable to provide a specimen in a
6 reasonable amount of time from the request, while at the
7 work site, Respondent understands that any Board
8 representative may request from the supervisor, manager or
9 director on duty to observe Respondent in a manner that
10 does not interrupt or jeopardize patient care in any manner
11 until such time Respondent provides a specimen acceptable
12 to the Board.

13 "Failure to submit to testing or appear as requested by any
14 Board representative for testing, as directed shall constitute a
15 violation of probation and shall result in the filing of an
16 accusation and/or a petition to revoke probation against
17 Respondent's respiratory care practitioner license."

18 17. Respondent's probation is subject to revocation because he failed to comply
19 with Probation Condition 2, referenced above. The facts and circumstances regarding this
20 violation are as follows:

21 Respondent was selected by Compass Vision, Inc. CVI to provide a specimen for
22 testing, but did not appear on September 15, 2004; January 7, and 11, 2005; February 9 and 15,
23 2005; March 15, 2005; June 10, 2005; September 9 2005; November 17, 2005; December 27,
24 2005; January 5, 2006; February 17, 2006; and March 30, 2006.

25 SECOND CAUSE TO REVOKE PROBATION

26 (Abstain from Use of Any and All Mood Altering Substances)

27 18. At all times after the effective date of Respondent's probation, Condition 3
28 stated:

1 “Respondent shall completely abstain from the possession or
2 use of alcohol, any and all other mood altering drugs,
3 substances and their associated paraphernalia, except when
4 the drugs are lawfully prescribed by a licensed practitioner
5 as part of a documented medical treatment.

6 “Respondent shall execute a release authorizing the release
7 of pharmacy and prescribing records as well as physical and
8 mental health records. Respondent shall also provide
9 information of treating physicians, counselors or any other
10 treating professionals as requested by the Board.

11 “Respondent shall ensure that he is not in the presence of or
12 in the same physical location as individuals who are using
13 illegal substances, even if Respondent is not personally
14 ingesting the drug(s).

15 “Any positive result that registers over the established
16 laboratory cutoff level shall constitute a violation of
17 probation and shall result in the filing of an accusation
18 and/or a petition to revoke probation against Respondent’s
19 respiratory care practitioner license.

20 “Respondent also understands and agrees that any positive
21 result that registers over the established laboratory cutoff
22 level shall be reported to each of Respondent’s employers.”

23 19. Respondent’s probation is subject to revocation because he failed to comply
24 with Probation Condition 3, referenced above. The facts and circumstances regarding this
25 violation are as follows:

26 A. On June 17, 2004, respondent provided a urine specimen for testing. The
27 laboratory report indicated that respondent tested positive for ethylglucuronide (ETG) at a level of
28 279 nanograms/milligrams. On June 30, 2004, the Board’s probation monitor telephoned

1 respondent and informed him of the positive result. Respondent stated he drank beer the weekend
2 prior to June 17, 2004.

3 B. On August 2, 2004, respondent provided a urine specimen for testing. The
4 laboratory report indicated that respondent tested positive for ETG at a level of 213
5 nanograms/milligrams.

6 C. On September 24, 2004, respondent provided a urine specimen for testing. The
7 laboratory report indicated that respondent tested positive for ETG at a level of 12700
8 nanograms/milligrams.

9 D. In respondent's Quarterly Report of Compliance dated January 25, 2005, he
10 stated he drank alcohol during this period and violated his criminal probation. In the Petition for
11 Arraignment on Probation Violation in respondent's criminal court case number NB01HF1142,
12 respondent admitted to drinking alcohol on September 16, 2004, and on December 1, 2004.

13 THIRD CAUSE TO REVOKE PROBATION

14 (Obey All Laws)

15 20. At all times after the effective date of Respondent's probation, Condition 5
16 stated:

17 "Respondent shall obey all laws, whether federal, state, or
18 local. Respondent shall also obey all regulations governing
19 the practice of respiratory care in California.

20 "Respondent shall notify the Board in writing within 14
21 days of any incident resulting in his arrest, or charges filed
22 against, or a citation issued against Respondent."

23 21. Respondent's probation is subject to revocation because he failed to comply
24 with Probation Condition 5, referenced above. The facts and circumstances regarding this
25 violation are as follows:

26 Respondent violated his probation by consuming alcohol. The facts and
27 circumstances, set forth in Paragraph 15 of this Petition to Revoke Probation, are
28 incorporated herein by reference. On April 15, 2005, respondent admitted that he violated

1 his criminal probation in case number NB01HF1142. The court ordered him to serve thirty
2 days in county jail.

3 On May 8, 2005, a California Highway Patrol officer made an enforcement stop of
4 a vehicle in which respondent was a passenger. Respondent was screaming loudly out of
5 the window at the officer, who was investigating a vehicle collision. When respondent
6 stepped out of the vehicle, the officer detected a strong odor of alcohol on his breath, and
7 observed that his eyes were red and watery, his speech was slow and slurred, and he was
8 having difficulty standing. When asked if he had been drinking, respondent refused to
9 answer. Respondent was arrested for public intoxication, a violation of Penal Code section
10 647(f), and interfering, delaying, or obstructing a peace officer in the performance of his
11 duties, a violation of Penal Code section 148(a)(1).

12 On June 27, 2005, respondent was arrested see paragraph 15(C) above.

13 On November 14, 2005, respondent was arrested see paragraph 15 (F) above.

14 Respondent failed to notify the Board within 14 days of his arrests on May 8, 2005;
15 June 27, 2005; and November 14, 2005.

16 FOURTH CAUSE TO REVOKE PROBATION

17 (Quarterly Reports)

18 22. At all times after the effective date of Respondent's probation, Condition 6
19 stated:

20 "Respondent shall file quarterly reports of compliance under
21 penalty of perjury, on forms to be provided to the probation
22 monitor assigned by the Board. Omission or falsification in
23 any manner of any information on these reports shall
24 constitute a violation of probation and shall result in the
25 filing of an accusation and/or a petition to revoke probation
26 against Respondent's respiratory care practitioner license.

27 "Quarterly report forms will be provided by the Board.

28 Respondent is responsible for contacting the Board to obtain

1 additional forms if needed. Quarterly reports are due for
2 each year of probation and the entire length of probation as
3 follows:

4 “For the period covering January 1st through March 31st,
5 reports are to be completed and submitted between April 1st
6 and April 7th. For the period covering April 1st through June
7 30th, reports are to be completed and submitted between July
8 1st and July 7th. For the period covering July 1st through
9 September 30th, reports are to be completed and submitted
10 between October 1st and October 7th. For the period
11 covering October 1st through December 31st, reports are to
12 be completed and submitted between January 1st and
13 January 7th.

14 “Failure to submit complete and timely reports shall
15 constitute a violation of probation.”

16 23. Respondent’s probation is subject to revocation because he failed to comply
17 with Probation Condition 6, referenced above. The facts and circumstances regarding this
18 violation are as follows:

19 Respondent failed to submit his Quarterly Report of Compliance:
20 for the period January 1, 2005 through March 31, 2005, due to the Board by April 7, 2005;
21 for the period April 1, 2005, through June 30, 2005, due to the Board by July 7, 2005; July 1,
22 2005 - September 30, 2005, due to the Board by October 7, 2006; for the period October 1, 2005,
23 through December 30, 2005, due to the Board by January 7, 2006; and for the January 1, 2006,
24 through March 31, 2006, due to the Board by April 7, 2006.

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27 FIFTH CAUSE TO REVOKE PROBATION

28 (Probation Monitoring Program)

1 24. At all times after the effective date of Respondent's probation, Condition 7
2 stated:

3 "Respondent shall comply with requirements of the Board
4 appointed probation monitoring program, and shall, upon
5 reasonable request, report to or appear to a local venue as
6 directed.

7 "Respondent shall claim all certified mail issued by the
8 Board, respond to all notices of reasonable requests timely,
9 and submit Annual Reports, Identification Update reports or
10 other reports similar in nature, as requested and directed by
11 the Board or its representative.

12 "Respondent is encouraged to contact the Board's Probation
13 Program at any time he has a question or concern regarding
14 his terms and conditions of probation.

15 "Failure to appear for any scheduled meeting or
16 examination, or cooperate with the requirements of the
17 program, including timely submission of requested
18 information, shall constitute a violation of probation and will
19 result in the filing of an accusation and/or a petition to
20 revoke probation against Respondent's respiratory care
21 practitioner license."

22 25. Respondent's probation is subject to revocation because he failed to comply
23 with Probation Condition 7, referenced above. The facts and circumstances regarding this
24 violation are as follows:

25 As part of respondent's random drug testing program, he was required to telephone
26 Compass Vision, Inc. (CVI) on a daily basis to determine if he needed to provide a specimen for
27 testing and analysis. Respondent failed to telephone CVI on the following dates: June 15, July 4,
28 5, 9, 24, 31, August 1, 7, 14, 18, 20 through 23, 25 through 29, September 1, 4, 9, 13, 16 through

1 19, 21, 26, 28, 29, October 5, November 26, 28, and December 2, 3, 5, 8, 10, 12, 13, 17, 18, 22,
2 24 through 26, 28 through 30, 2004, and January 1, 4 through 6, 8 through 13, 15 through 31,
3 February 1 through 6, and 8 through 28, March 1 through 31, April 1 through 30, May 1 through
4 31, June 1 through 30, July 1 through 31, August 1 through 17, 2005, August 18 through 31,
5 2005, September 1, September 3 through 19, 2005, and September 21, 2005 through May 30,
6 2006.

7 SIXTH CAUSE TO REVOKE PROBATION

8 (Probation Monitoring Costs)

9 26. At all times after the effective date of Respondent's probation, Condition 8
10 stated:

11 "All costs incurred for probation monitoring during the
12 entire probation shall be paid by the Respondent. The
13 monthly cost may be adjusted as expenses are reduced or
14 increased. Respondent's failure to comply with all terms
15 and conditions may also cause this amount to be increased.

16 "All payments for costs are to be sent directly to the
17 Respiratory Care Board and must be received by the date(s)
18 specified. (Periods of tolling will not toll the probation
19 monitoring costs incurred.)

20 "If Respondent is unable to submit costs for any month, he
21 shall be required instead to submit an explanation of why he
22 is unable to submit the costs, and the date(s) he will be able
23 to submit the costs including payment amount(s).

24 Supporting documentation and evidence of why the
25 Respondent is unable to make such payment(s) must
26 accompany this submission.

27 "Respondent understands that failure to submit costs timely
28 is a violation of probation and submission of evidence

1 demonstrating financial hardship does not preclude the
2 Board from pursuing further disciplinary action. However,
3 Respondent understands providing evidence and supporting
4 documentation of financial hardship may delay further
5 disciplinary action.

6 “In addition to any other disciplinary action taken by the
7 Board, an unrestricted license will not be issued at the end of
8 the probationary period and the respiratory care practitioner
9 license will not be renewed, until such time all probation
10 monitoring costs have been paid.

11 “The filing of bankruptcy by Respondent shall not relieve
12 the Respondent of his responsibility to reimburse the Board
13 for costs incurred.”

14 27. Respondent’s probation is subject to revocation because he failed to comply
15 with Probation Condition 8, referenced above. The facts and circumstances regarding this
16 violation are as follows:

17 Respondent is delinquent in his probation monitoring costs in the amount of
18 \$2,100.00 from August, 2004, through May, 2006.

19 SEVENTH CAUSE TO REVOKE PROBATION

20 (Cost Recovery)

21 28. At all times after the effective date of Respondent’s probation, Condition 12
22 stated:

23 “Respondent shall pay to the Board a sum not to exceed the
24 costs of the investigation and prosecution of this case. That
25 sum shall be \$451.00 and shall be paid in full directly to the
26 Board, in equal quarterly payments, within 12 months from
27 the effective date of this decision. Cost recovery will not be
28 tolled.

1 "If Respondent is unable to submit costs timely, he shall be
2 required instead to submit an explanation of why he is
3 unable to submit these costs in part or in entirety, and the
4 date(s) he will be able to submit the costs including payment
5 amount(s). Supporting documentation and evidence of why
6 the Respondent is unable to make such payment(s) must
7 accompany this submission.

8 "Respondent understands that failure to submit costs timely
9 is a violation of probation, and submission of evidence
10 demonstrating financial hardship does not preclude the
11 Board from pursuing further disciplinary action. However,
12 Respondent understands that providing evidence and
13 supporting documentation of financial hardship may delay
14 further disciplinary action.

15 "Consideration to financial hardship will not be given should
16 Respondent violate this term and condition, unless an
17 unexpected and unavoidable hardship is established from the
18 date of this order to the date payment(s) is due.

19 "The filing of bankruptcy by the Respondent shall not
20 relieve the Respondent of his responsibility to reimburse the
21 Board for these costs."

22 29. Respondent's probation is subject to revocation because he failed to comply
23 with Probation Condition 12, referenced above. The facts and circumstances regarding this
24 violation are as follows:

25 Respondent failed to make any of his cost recovery payments and is delinquent in
26 the total amount of \$451.00.

27 EIGHTH CAUSE TO REVOKE PROBATION

28 (Valid License Status)

1 30. At all times after the effective date of Respondent's probation, Condition 14
2 is stated:

3 "Respondent shall maintain a current and valid license for the length of probation
4 period failure to pay fees and meet Continuing Education requirements prior to the
5 expiration date shall constitute violation of probation."

6 31. Respondent's probation is subject to revocation because he failed to comply
7 with Probation Condition 14 referenced above . The facts and circumstances regarding this
8 violations are as follows:

9 A. Respondent failed to renew his license and it expired on October 31,
10 2005.

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27 PRAYER

28 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein

alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 16811, issued to James Raymond Lagutaris;

2. Revoking the probation that was granted by the Respiratory Care Board of California in Case No. R-1861 and imposing the disciplinary order that was stayed thereby revoking Respiratory Care Practitioner License No. 16811 issued to James Raymond Lagutaris;

3. Ordering James Raymond Lagutaris to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: May 30, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant